Understanding the Forest Practice Rules

By Steven W. Ferla, Esq.

In 2005, San Jose Water Company (SJWC) proposed to harvest timber in the Los Gatos Creek watershed. As a result of efforts lead by Neighbors Against Irresponsible Logging (NAIL) and joined by the Forest Protection Committee of the Loma Prieta Chapter of the Sierra Club, the California Dept. of Forestry and Fire Protection (CAL FIRE) ultimately denied approval of SJWC’s plan in 2007.

In so doing, the effort spotlighted the logging approval process. As part of their environmental toolbox, every Loma Prietan should know that harvesting timber on privately owned land in California is regulated by the Forest Practice Rules (Rules) under the Forest Practice Act (FPA). CAL FIRE is charged with permit issuance and enforcement in what is a complicated and often controversial fast-track process.

The FPA was enacted in 1973 to ensure that logging is done in a manner that considers impacts to our fish, wildlife, forests and streams while still promoting logging. It requires that any “timber harvest plan” (THP) adopt ‘feasible’ mitigation measures or alternatives which substantially lessen or avoid significant adverse impacts of logging on the environment. Thus, THPs are the source of many disputes. This article will cover “the basics” in the review process for a THP.

A landowner must get approval of a THP before starting commercial logging operations. THPs last for three years with the possibility of two one-year extensions. Landowners owning less than 2500 acres may apply for a non-industrial timber management plan (NTMP) which allows the owner to log indefinitely without further multi-agency or public review. The review process is essentially the same for NTMPs and THPs, however, an NTMP must include a ‘management plan’.

The THP (and NTMP) must be prepared by a registered professional forester (RPF). The THP describes the proposed operations and includes information like silviculture (the type of logging, i.e. clear cut, selective logging, etc.), yarding (the removal of logs by tractor, cable or helicopter), erosion hazard rating (which analyzes soil type, steepness of slope, and rainfall), slope stability and landslides, road/landing sites, and other factors. A Cumulative Impacts Assessment is also prepared that is supposed to analyze the impact of past, present and future logging activities. Together, all this information is deemed under state law to be the equivalent of an environmental impact report.

All landowners within 300 feet of the THP boundary are notified and a notice must be published in a local newspaper. The RPF must also notify landowners within 1000 feet downstream of the harvest area requesting information about any instream drinking water intakes that could be affected by the logging. Then the plan is submitted to CAL FIRE where a review team conducts an initial ‘first review’ for accuracy and completeness and

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1 Some logging may occur under “Exemptions”, but this article will not discuss that option.
prepares a list of questions to be answered by the RPF. A THP deemed incomplete is returned to the RPF. A THP deemed adequate is accepted for filing. From submission to filing takes 10 days.

Once a THP is ‘filed’ and before the process can go any further, the RPF must answer the first review questions or concerns raised by CAL FIRE and any other agencies who may have participated. Filing also starts the official clock for public comment, usually by letters and reports generated by interested individuals and groups. In counties with “special forest practice rules” (like Santa Clara, San Mateo and Santa Cruz), a public hearing may be held.

A Pre-Harvest Inspection (PHI) is supposed to be, but rarely is, scheduled within 10 days after filing. However a PHI is required in counties with special rules. During the PHI site visit, the RPF and the review team inspect the proposed harvest area. Afterwards, reports are submitted by the agencies addressing concerns and recommending mitigations. Importantly, the public comment period continues for a minimum of 35 days after the PHI!

Once the RPF responds to the PHI reports, the review team conducts a “second review” where the reports and responses are discussed and changes to the THP are recommended. If significant new information has been received, CAL FIRE must then renotice and recirculate the plan which extends the public comment period for an additional 30 days.

Finally, CAL FIRE recommends the THP for approval or denial (almost never) and an Official Response is prepared within 15 days after the close of public comment.

The entire process, in counties with special rules, is set to take only about 45 days from submission to the close of public comment. However, due to agency overload, often compounded by the incompleteness of the submitted plans and reluctance of the RPF to accept agency recommendations, it is nearly impossible to meet the deadlines listed above. Thus, CAL FIRE is normally granted time extensions by the RPF that stretch out the process, sometimes for several months or even years. This extends the public comment period, allowing concerned citizens and groups time to more effectively participate. Even so, vigilance is required.

Steven Ferla is the Legal Chair of the Loma Prieta Chapter and member of the Forest Protection Committee. For more information about the Los Gatos Creek watershed situation, go to www.mountainresource.org/nail or www.calfire.ca.gov. Prepared with technical review and editing assistance from Jodi Frediani, Chair, Forestry Task Force, Santa Cruz Group of the Ventana Chapter.